

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THOMAS MOWREY,

Plaintiff,

v.

No. 2:19-cv-00307-KRS

ADOBE DELI LLC,
VAN H. JACOBSEN, and
VICTORIA L. JACOBSEN,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO PROCEED IN FORMA PAUPERIS

THIS MATTER comes before the Court on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed April 3, 2019 ("Short Form Application"), and on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), Doc. 6, filed April 12, 2019 ("Long Form Application").

Application to Proceed In Forma Pauperis

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). “[A]n application to proceed *in forma pauperis* should be evaluated in light

of the applicant's present financial status.” *Scherer v. Kansas*, 263 Fed.Appx. 667, 669 (10th Cir. 2008) (citing *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir.1988)). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs....” See *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

Plaintiff signed an affidavit declaring that he is unable to pay the costs of these proceedings and stated: (i) his and his spouse's combined average monthly income amount during the past 12 months was \$2,375.00; and (ii) their combined monthly expenses total \$2,452.56. The Court grants Plaintiff’s Long Form Application because he signed an affidavit declaring that he is unable to pay the costs of these proceedings and because his and his spouse's combined monthly expenses exceed their monthly income.

Because the Court is granting Plaintiff's Long Form Application, the Court denies Plaintiff's Short Form Application as moot.

Service on Defendants

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915 which provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d). Because Plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915, the Court will order the Clerk of the Court to notify Defendants, at the addresses provided by Plaintiff in his Complaint, that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d).

IT IS ORDERED that:

- (i) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), Doc. 6, filed April 12, 2019, is **GRANTED**.
- (ii) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed April 3, 2019, is **DENIED as moot**.
- (iii) The Clerk of the Court shall notify Defendants that an action has been commenced and request that Defendants waive service pursuant to Fed. R. Civ. P. 4(d). The notice shall include a copy of Plaintiff's Complaint, Doc. 1, filed April 3, 2019. The Clerk shall mail the notice, waiver and a copy of the Complaint to Defendants at the following addresses:

Adobe Deli LLC
2970 Lewis Flats Road
Deming, New Mexico 88031

Van H. Jacobsen
3970 Lewis Flats Road
Deming, New Mexico 88031

Victoria L. Jacobsen
3970 Lewis Flats Road
Deming, New Mexico 88031

If any Defendant does not return the waiver within 45 days after the request is sent, then the United States Marshal shall serve a copy of the Summons and Complaint on that Defendant.



UNITED STATES MAGISTRATE JUDGE